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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,070	07/30/2001	James Paul Cleary	CLEARY-39507	2556
26252	7590	02/10/2004	EXAMINER	
KELLY BAUERSFELD LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367			MAYES, MELVIN C	
			ART UNIT	PAPER NUMBER
			1734	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,070

Applicant(s)

CLEARY ET AL.

Examiner

Melvin Curtis Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 7, 9 and 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/30/01.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

(1)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(2)

Claims 8, 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 8, 15 and 17, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

(3)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

(4)

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perez-Alderete 5,950,299 in view of Fattore 5,419,589 and GB 2 286 527

Perez-Alderete discloses a method of making a plaster memorabilia comprising: providing a pan having a rectangular bottom face with a periphery having a side wall extending upwardly from the bottom face, mixing plaster with water; placing the wet plaster in the pan; impressing various body parts such as hands and feet within the wet plaster; writing characters such as the name of the person associated with the impressions in the plaster; allowing the plaster to dry; and securing the rigid plaster block in a frame for mounting (col. 3-6). Perez-Alderete does not disclose providing the mold with an internal wall to create a window in the plaster and associating a photograph with the window.

Fattore teaches that it is known to display a picture with imprints of body portions of the person displayed in the picture (col. 1).

GB 2 286 527 teaches that a person wishing to produce his own frame for mounting a photograph can mold the frame from a liquid or substance for producing a liquid and which becomes rigid with time, such as plaster, by using a mold having a mold surface of complementary shape to that required of an outer surface of the frame and a central plateau surrounded by a sunken region adapted to receive the casting material to create a frame. GB '527 further teaches that powdered plaster for mixing may have coloring agent added to produce a colored frame (pgs 1-8).

It would have been obvious to one of ordinary skill in the art to have modified the method of Perez-Alderete for making a plaster memorabilia by allowing the memorabilia to also display a photograph, as Fattore teaches that it is known to display a picture of the person with the imprints of the body portions of the person. Modifying the method of Perez-Alderete by molding the plaster such that the plaster block also has a window for displaying a photograph would have been obvious to one of ordinary skill in the art, as GB '527 teaches that a frame for a photograph can be made by molding plaster using a mold having a central plateau (internal wall) surrounded by the portion of the adapted to receive the plaster. Providing the mold of Perez-Alderete with a central plateau around which the wet plaster is cast would have been obvious to one of ordinary skill in the art to provide the molded plaster with an opening (window) through which a photograph associated with the impressed body parts can be displayed, as suggested by Fattore.

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It would have been obvious to one of ordinary skill in the art to have further modified the method of the references as combined by mixing coloring agent with the plaster, as taught by GB '527 to produce a colored frame.

(5)

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 3 above, and further in view of Baker 5,618,105.

Baker teaches that hardenable materials such as plaster can be mixed in a mixing bag by filling the ingredients in the bag and kneading the bag with the hands (Abstract and col. 8, lines 51-65).

It would have been obvious to one of ordinary skill in the art to have modified the method of the references as combined by mixing the plaster and water in a bag by hand, as Baker teaches that hardenable materials such as plaster can be mixed in a mixing bag by filling the ingredients in the bag and kneading the bag with the hands.

Allowable Subject Matter

(6)

Claims 11-14 and 16 are allowed.

(7)

Claims 7, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(8)

Claims 15 and 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.


Conclusion

(9)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Melvin Curtis Mayes
Primary Examiner
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